THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16073 of 2007

DATED: 11.09.2007

Between:

L. Venkaiah Setty .. Petitioner

And

The Government of India, rep. by its Deputy Secretary,
Ministry of Shipping, Road Transport and Highways,
(Department of Road Transport and Highways),
New Delhi,
and another. .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16073 of 2007

ORDER:

This Court ordered notice before admission on 27.07.2007 and also granted an order of status-quo. Subsequently, W.V.M.P.No.2192 of 2007 is filed to vacate the interim order.

2. This writ petition is filed for a writ of Mandamus declaring the action of the respondents in proposing to install an electric tower in Plot No.39 in Sy.No.382(P), Kullur Village, Kurnool District which does not include in the notification SO.No.1489 E dated 17.10.2005 issued by the respondent and consequential notification SO No.1732(E) dated 9.10.2006 issued by the 1st respondent, as illegal, arbitrary and against the principles of natural justice, and consequently direct the respondent not to shift the already existing electric tower in to the petitioner plot without following due process of law.

3. In the affidavit filed in support of the writ petition, it is stated by the petitioner that he is the owner of the land measuring an extent of Ac.0.08 cents situated in Sy.No.382(P) of Kallur Village and Mandal, Kurnool District. The said land is plot No.38 as per the layout No.544/82 approved by the Kallur Gram Panchayat.

It is also stated that the 1st respondent herein in order to acquire some land for widening N.H.No.7 on the stretch of land from

K.M.203.002 to KM 293.000 (Hyderabad – Banglore Sec.) in Kurnool District appears to have issued a notification S.O.No.1489 (E) dated 17.10.2005 under Section 3-A(1) of the National Highways Act, 1956. Under the said notification, the 1st respondent herein appears to have invited objections from the persons interested in the land. The 2nd respondent herein has been designated as the competent authority for the said purpose.

It is also further stated that in the aforesaid notification, no details were given with reference to the owners/possessors of the lands whose lands were proposed to be affected. Vague particulars were given therein indicating only Survey numbers, type of land such as private or government and the area proposed to be covered. The area proposed to be covered in each survey number ranges from Ac.0.01 to Ac.8.51. Inasmuch as the aforesaid notification did not disclose the names of the persons who were likely to be affected and inasmuch as the notification was not published in prominent vernacular local newspapers, the petitioners herein could not file their objections. The 1st respondent herein ultimately issued a notification SO.No.1732 (E) dated 9.10.2006 under Section 3D (1) and Section 3D(2) of the National Highways Act, 1956. Subsequently, the 2nd respondent herein issued a notification No.2301/02/2006/PIV-ATP/dated 24.11.2006, published in the newspaper Vaartha dated 1.12.2006 calling upon the interested persons to appear before him on 5.12.2006 along with the documents to support their ownership.

It is further stated that a draft notification dated 17.10.2005 issued under Section 3A(1) of the National High Way Act, 1986 did not contain details regarding the owner of the persons whose lands were proposed to be acquired on account of which the petitioner had no knowledge that their lands would be acquired. Even otherwise, as per

the said notification, the land in Sy.No.382(P) was not proposed to be acquired. The petitioner name is not shown in the notification. The said notification did not even contain plot numbers although the land has been divided into plots approved by the concerned authorities.

It is also further stated that in the notification dated 9.10.2006 issued U/s.3D(1) and (2) of the Act, new entries have been brought showing the names of the land owners/interested persons and the plot numbers. But these new entries are not free from material defects as some of the names of the actual owners were not either shown or names of others who are not the owners were shown.

It is further stated that the above mentioned facts clearly disclose that both the notifications issued under Section 3A and 3D of the Act do not confirm to the requirements of law. The draft notification is vague without containing the names of the persons likely to be affected and did not indicate which parts of the total extent of land in each survey number were proposed to be acquired. The final notification issued under 3D and the notification issued under 3G by the 2nd respondent herein also either did not indicate the names of the affected persons or they were shown wrongly. The petitioners therefore, had no opportunity to submit their objections to the notification dated 11.10.2005 issued U/s.3A of the Act.

Several grounds also had been raised in the affidavit filed in support of the writ petition.

4. In the counter affidavit filed on behalf of the 1st respondent, it is stated that at para 3 that it is true to say that the 1st respondent has issued notification S.O.No.1489(E) dt.17-10-2005 under Sec.3A(1) of the National Highways Act, 1956 to acquire the land in Kurnool Dist. for widening of N.H.No.7 on the stretch of K.M.203.002 to K.M.293.00

(Hyderabad-Bangalore). The 2nd respondent has been designated as the Competent Authority to hear the objections if any from the persons interested in the land.

Further, at para 4 of the counter affidavit, it is stated that in the aforesaid Notification dt.17-10-2005, the petitioner's land is not mentioned for acquisition for the purpose of widening of the Road. As such, the petitioner's land is not acquiring in any of the Notification by the National Highways Authority of India as on this day. The petitioner's land is not required for the purpose of widening of the Road on N.H.7. The petitioner is no way concerned with regard to the other contention i.e., the manner of publishing the notification since he is not the effected person/looser of his land in the said acquisition.

It is also stated in para 5 that the N.H.A.I. is not shifting any tower into the plot of the petitioner as alleged by the petitioner. The other contention of the petitioner that the 2nd respondent has not passed any award nor has taken any other step to take over the land of the petitioner does not arise as there is no acquisition proposal to acquire the land of the petitioner by the NHAI as on today.

Further, it was stated that if any land is required for NHAI, the procedure contemplated under the National Highways Act would be followed for the purpose of acquisition and without following the procedure, NHAI would not enter into the land of the petitioner.

Several, further facts also had been narrated in para 7 of the counter affidavit.

5. In the light of the specific stand taken in paras 4,5 and 6 of the counter affidavit filed by the first respondent as specified supra and also in the light of the submissions made by both the parties, the writ petition is disposed of with an observation that in the event of the first

respondent requiring the land of the writ petitioner, then it has to follow the procedure in accordance with law. No costs.

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(**P.S.NARAYANA,J)**

Dt.11.09.2007
v v